

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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MAY - 8 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Qwest Communications ) WC Docket No. 03-90  
International Inc. )  
 )  
Application for Authority to Provide )  
In-Region, InterLATA Services in Minnesota )

REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

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**REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.**

Pursuant to the Commission's *Public Notice*, DA 03-1019 (March 28, 2003),  
Qwest Communications International Inc. ("Qwest") hereby submits its Reply Comments in the  
captioned proceeding.

**I. GRANT OF QWEST'S APPLICATION IS SUPPORTED BY THE RECORD AND  
COMMISSION PRECEDENT**

No party disputes that significant local exchange competition exists in Minnesota.  
Nor can any party dispute that Qwest has opened its markets in Minnesota using the same  
systems and policies that the Commission already has approved in twelve other states. The  
Commission should grant this application as well. In doing so, the FCC will advance the pro-  
competitive objectives of the Act by, among other things, giving "rural customers access to a full  
array of telecommunications services" and "reducing the disparity in telecommunications  
services and options between the metropolitan and more rural areas of Minnesota." Comments  
of the Minnesota Public Utilities Commission (April 17, 2003) ("MNPUC Comments"),  
Attachment 1, Separate Comments of Chair LeRoy Koppendraye ("Koppendraye Comments"),  
at 23.

For its part, the Department of Justice “recommends that the Commission approve Qwest’s application for long distance authority in Minnesota,” subject to this Commission’s independent evaluation. *See* DOJ Evaluation (May 2, 2003) at 3, 11. The Department recognizes that this application presents essentially the same record that the Commission already has approved twice before in connection with twelve other Qwest in-region states.

Only four parties filed comments in response to the *Public Notice*. The Communications Workers of America, citing the extensive Minnesota record demonstrating that Qwest has satisfied the market-opening requirements of the Act, supports grant of Qwest’s application. The other three commenters - AT&T Corp. (“AT&T”), Sprint Communications Company L.P. (“Sprint”) and WorldCom, Inc. (“WorldCom”) – seek to distract attention from Qwest’s satisfactory record of compliance with Section 271 by renewing arguments that have been considered, and rejected, by the Commission in the course of its evaluation of the Qwest III and Qwest IV applications.

The Minnesota Public Utilities Commission (“MNPUC”) has submitted a divided recommendation. The MNPUC collectively has determined that Qwest has satisfied Track A, 12 of the 14 elements of the competitive checklist, and Section 272.<sup>1/</sup> Chair Koppendrayner also has found that Qwest meets the remaining elements of Section 271 and recommends approval of this application. Three of the Minnesota commissioners, however, have taken the position that grant of Qwest’s application would not serve the public interest (and that Qwest cannot be found to have complied with Checklist Item 14) unless and until Qwest waives its appellate rights and

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<sup>1/</sup> Only four of the MNPUC’s five commissioners participated in the Minnesota Qwest Section 271 proceeding. Two of the four commissioners believe that what they characterize as inadequacies in Qwest’s billing system preclude a finding of compliance with Checklist Item 2, a matter addressed below at Section IV.C.

accepts remedies ordered by the MNPUC in its ongoing, separately-docketed enforcement proceeding regarding “unfiled agreements.” *See* MNPUC Comments, Attachment 3, Separate Comments of Commissioners Gregory Scott and R. Marshall Johnson (“Scott/Johnson Comments”), at 37; *see also id.*, Attachment 2, Separate Comments of Commissioner Phyllis A. Reha (“Reha Comments”), at 28.

With due respect to the three Minnesota Commissioners, their arguments have been rejected by the Department of Justice and are inconsistent with this Commission’s direct precedent on the “unfiled agreements” matter in prior Section 271 decisions. Qwest takes this enforcement situation very seriously, and implemented corrective action a year ago. The MNPUC has recognized that the conduct at issue ended at that time, but is assessing penalties for the historical violations. Section 271 of the Telecommunications Act does not contemplate that the public will be denied the benefits of greater interexchange competition in these circumstances. Rejection of this application would simply be an additional, improper penalty on Qwest for the conduct already at issue in the MNPUC’s enforcement docket. More important, it would be a penalty on Minnesota consumers.

In short, the record here is essentially the same as the one the Commission approved in Qwest III and Qwest IV.<sup>2/</sup> Nothing in the comments demonstrates otherwise. The Commission should grant this application as well.

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<sup>2/</sup> Qwest is submitting, as an Appendix to these Reply Comments, information in response to certain FCC Staff questions regarding its commercial performance results under PIDs MR-7 (for UNE-P-POTS); MR-8 (for UDIT Above DS1 and DSI-Capable Loops); and OP-3 (for EEL).

## II. COMPETITION IN MINNESOTA FULLY SATISFIES THE COMMISSION'S TRACK A PRECEDENT

The Commission has made clear that Track A is satisfied so long as a BOC can show that at least one predominantly facilities-based CLEC is “an actual commercial alternative” to the BOC – which can be done by demonstrating that the CLEC serves “more than a *de minimis* number” of subscribers.<sup>3/</sup>

Qwest has demonstrated in its application that it far exceeds this standard in Minnesota. In fact, as of December 31, 2002, Qwest provides 106,827 stand-alone unbundled loops to 26 unaffiliated CLECs and 84,428 UNE-Ps to 17 CLECs. *See* Qwest Br. at 7; Declaration of David L. Teitzel, State of Local Exchange Competition, Track A and Public Interest Requirements (“Teitzel Decl.”), Att. 5, App. A, at 8 and Exh. DLT-Track A/PI-MN-1; *see also* Exh. DLT-Track A/PI-MN-3. Further, as of December 31, 2002, Qwest has completed 651 CLEC collocations and is providing 173,012 local interconnection trunks in order for CLECs to access and interconnect with Qwest’s network in Minnesota. *See* Qwest Br. at 7-8; Teitzel Decl. at 8. Thus, Qwest fully satisfies Commission precedent with respect to the requirements of Track A.

Sprint attempts to argue that CLEC market share in Minnesota is inadequate.

Sprint Comments at 8. But Sprint is simply rehashing the same arguments it previously made –

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<sup>3/</sup> *See Alabama, Kentucky, Mississippi, North Carolina, and South Carolina 271 Order*, 17 FCC Rcd at 17755-56 ¶ 284 n.1100 (noting Section 271 applications were granted in Connecticut with 0.1% residential competition, in Vermont with 0.28%, Maine with 0.55% and New Jersey with 1.32%); *New Jersey 271 Order*, 17 FCC Rcd at 12281 ¶ 10; *Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6257 ¶ 42; *Michigan 271 Order*, 12 FCC Rcd at 20585 ¶ 78. In New Jersey, a CLEC serving no more than 733 residential access lines was deemed to satisfy the *de minimis* standard. *See New Jersey 271 Order*, 17 FCC Rcd at 12281-83 ¶¶ 11-13, n.33 & n.41. A CLEC serving no more than 345 residential lines satisfied the standard in Vermont. *Vermont 271 Order*, 17 FCC Rcd at 7630 ¶11; *see also DOJ Vermont Evaluation* at 5 n.19.

and that the Commission previously rejected – in the context of the Qwest III Application.<sup>4/</sup> The Commission repeatedly has rejected any suggestion that it should “require [a] particular level of market penetration;”<sup>5/</sup> moreover, as the Commission observed in the *Qwest III 271 Order*, “Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance.” *Qwest III 271 Order*. 17 FCC Rcd at 26318-19 ¶ 32.

In any event, as noted above, the percentage of customers served by CLECs in Minnesota is significantly greater than the penetration rates in many of the other states in which the Commission has granted Section 271 approval. See *Qwest Br.* at 112; *Teitzel Decl.* at 51-52. Sprint’s comments should be rejected.

### **III. QWEST’S MINNESOTA SGAT DOES NOT INTERFERE WITH CLECS’ RIGHT TO OBTAIN INTERCONNECTION TRUNKING**

Qwest provides nondiscriminatory interconnection in compliance with the Act.

AT&T is wrong when it asserts that the Minnesota SGAT’s version of Section 7.2.2.8.6

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<sup>4/</sup> See *Qwest III 271 Order*, 17 FCC Rcd at 26318-19 ¶ 32. Sprint also asserts, as it did in both the Qwest III and Qwest IV proceedings, that “Qwest’s methodology [for estimating CLEC market share] improperly inflates the CLECs’ line estimates by including CLECs’ high speed data lines and local lines which are not used for competitive local service . . .” Sprint Comments at 9. But, as Qwest demonstrated in the Qwest III and Qwest IV proceedings, regardless of how Sprint’s, or any other CLEC’s, customers use their access lines – that is, whether they connect a telephone to them and use them for voice, or connect a modem and use them for IP dial-up service – Qwest is directly competing to provide the same product: a two-way, voice-grade retail access line. The Commission has never suggested that a BOC must adjust its CLEC retail access line data to reflect the type of traffic an end user may be sending over the line at any particular moment, especially since the same access line can be used for both voice and data at different times during the same day.

<sup>5/</sup> See, e.g., *New Jersey 271 Order*, 17 FCC Rcd 12281-82 ¶¶ 10, 13; *Michigan 271 Order*, 12 FCC Rcd at 20585 ¶ 77; *Qwest III 271 Order*, 17 FCC Rcd at 26314, 26318-19 ¶¶ 20, 32. The Court of Appeals for the D.C. Circuit has affirmed that the Act “imposes no volume requirements for satisfaction of Track A.” *Sprint v. FCC*, 274 F.3d at 553-54; see also *SBC Communications Inc. v. FCC*, 138 F.3d at 416 (“Track A does not indicate just how much competition a provider must offer in either the business or residential markets before it is deemed a ‘competing’ provider”).



interferes with a CLEC's right to obtain interconnection trunking.<sup>6/</sup> This provision reasonably protects Qwest against incurring undue risk of constructing more trunking facilities than CLECs actually require. It also provides for recovery to Qwest when Qwest builds capacity in excess of its own forecasts to meet a CLEC order, and the CLEC then does not actually use the capacity.

To begin with, Minnesota SGAT § 7.2.2.8.6 has been approved by the MNPUC and has been part of the Minnesota SGAT since October 2001. Despite numerous opportunities to do so, AT&T did not raise any objection to this forecasting section during the Section 271 review process before the MNPUC. AT&T cannot now raise an objection to this section in the context of this Section 271 proceeding.

AT&T's past silence is not surprising, for neither AT&T nor any other CLEC is adversely impacted by this SGAT provision. If anything, Qwest thought that AT&T would prefer this back-end approach to the front-end deposit requirement that the FCC has approved in other states. In any event, the SGAT provision does not implicate checklist compliance under Section 271.

As background, when a CLEC provides Qwest with interconnection trunking forecasts, it is not placing an order, but rather indicating the CLEC's rough projection of its future needs. It is unreasonable to expect Qwest to bear fully the risk associated with constructing such forecasted, but uncommitted capacity, when there is no assurance that the forecasting CLEC will need, use, and pay for it. A CLEC's need, use and payment are more definite when an actual order is placed. To address Qwest's risk, all of Qwest's SGATs (including Minnesota and those in the twelve states previously approved by the Commission)

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<sup>6/</sup> See AT&T Comments at 24-26. For a more detailed discussion of CLEC forecasting and Minnesota SGAT § 7.2.2.8.6, see the Reply Declaration of Thomas R. Freeberg, Checklist Item 1 (Interconnection), attached hereto.

allow Qwest to construct a lower number of trunks than stated in a forecast by the CLEC when the CLEC has at least an eighteen-month history of over-forecasting, and when there is no opportunity for re-use by any other party. *See* Minnesota SGAT § 7.2.2.8.6. Qwest's Minnesota SGAT permits Qwest to seek non-punitive liquidated damages (not to exceed Qwest's construction costs) only in an instance when (1) Qwest has constructed non-reusable facilities in response to a CLEC forecast; (2) the CLEC does not follow through on its forecast with actual orders, and (3) the same facilities are stranded. <sup>7/</sup>

In fact, the only substantive difference between Qwest's Minnesota SGAT and the twelve SGATs already reviewed by the Commission is that Minnesota SGAT §§ 7.2.2.8.6 and 7.2.2.8.6.1 do not require the CLEC to pay a refundable deposit before Qwest will construct to the CLEC's forecast under certain circumstances, even though the Commission has allowed for such deposits. <sup>8/</sup> It is noteworthy that AT&T vigorously opposed deposits in Qwest's other Section 271 proceedings. <sup>9/</sup> Minnesota SGAT § 7.2.2.8.6 is a good faith effort on Qwest's part to provide competitors, including AT&T, with an alternative to provisions requiring deposits before Qwest builds out facilities to meet CLEC elevated trunk forecasts.

In fact, CLECs have opted into at least 64 interconnection agreements with Qwest in Minnesota that do not contain any version of SGAT § 7.2.2.8.6 (*i.e.*, the agreements contain neither a deposit nor a damages provision). Any CLEC, including AT&T, can opt in to

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<sup>7/</sup> *See id.* § 7.2.2.8.6.1. Since this provision was included in the Minnesota SGAT in October 2001, *no CLEC has ever submitted a deposit, and Qwest has not exercised any right to seek damages* in Minnesota based upon § 7.2.2.8.6.

<sup>8/</sup> *See e.g., Qwest III 271 Order* ¶¶ 320-21 (specifically approving deposit language); *Qwest IV 271 Order* ¶ 86 (generally approving Qwest provision of interconnection).

<sup>9/</sup> *See e.g., AT&T Qwest III Comments* at 80; *AT&T Qwest II Wilson Decl.* ¶¶ 14, 17; *AT&T Qwest I Wilson Decl.* ¶¶ 13, 16; *AT&T August 21, 2002 Ex Parte Letter.*

interconnection agreements containing the non-deposit version, the deposit version, or no version at their independent discretion. It is worth mentioning that AT&T's current interconnection agreement does not contain either version of SGAT § 7.2.2.8.6.

In the event that Qwest constructs a smaller number of trunks than forecast by the CLEC, and there is a shortage of facilities, then Qwest is penalized pursuant to the PAP. However, as can be seen from the interconnection performance results, no such shortage of facilities has occurred in Minnesota, notwithstanding AT&T's apocalyptic prophecies.<sup>10/</sup>

In sum, AT&T's belated criticism of this SGAT provision does not present a reason to find that Qwest is not meeting Checklist Item 1 in Minnesota.

#### **IV. QWEST'S OSS COMPLIES WITH THE REQUIREMENTS OF SECTION 271**

The Commission already has found, in the Qwest III and Qwest IV proceedings, that Qwest's operations support systems ("OSS") fully satisfy the requirements of Section 271. Because Qwest's OSS is the same region-wide, the Commission's prior findings apply equally to the Minnesota Section 271 application.<sup>11/</sup> The only commenters to challenge the adequacy of Qwest's OSS in any respect are two of the Minnesota Commissioners, AT&T, and WorldCom. As discussed below, the OSS concerns expressed by the Minnesota Commissioners, which involve minor billing-related issues, are limited and are easily addressed. Many of the issues raised in AT&T's comments were already argued, fully addressed and rejected in the Qwest III and Qwest IV proceedings. None of AT&T's remaining arguments has merit, as discussed below. Finally, WorldCom does not even attempt to make new OSS-related arguments, but

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<sup>10/</sup> OP-3, OP4, OP15, NI-1

<sup>11/</sup> See *Qwest IV Order* ¶¶ 37 (finding Qwest's OSS to be the same throughout its region, and thus that the findings of Qwest III can be applied to the applications in Qwest IV).

purports instead to rely on its prior filings in other Qwest Section 271 proceedings, where its arguments were rejected. WorldCom Comments at 1-3.

**A. Interface Development**

AT&T argues that it “would be able to enter the residential market in Minnesota at the present time only by using Qwest’s [IMA-]GUI interface,” pointing to a number of instances of what it contends are faults with Qwest’s IMA-EDI interface or documentation.<sup>12/</sup> AT&T’s contention is baseless. First, as discussed below and in the Reply Declaration of Lynn M V Notarianni and Christie L. Doherty, Checklist Item 2 (Operations Support Systems) (“OSS Reply Declaration”) ¶ 7, many of the claims AT&T makes regarding Qwest’s EDI interface already have been raised in connection with either the nine-state or the three-state application and expressly rejected by the FCC, as AT&T itself acknowledges. AT&T Comments at 5. Second, none of the new criticisms of Qwest’s EDI interface raise Section 271 issues. OSS Reply Decl. ¶¶ 5-13. Third, AT&T’s decision regarding which interface to use to serve residential customers in the Minnesota market, and the timing of its decision to move to EDI for that purpose, is entirely its own. *Id.* ¶¶ 6, 8-11. Other CLECs and HP, the pseudo-CLEC in the ROC third-party test, have successfully built EDI interfaces and used them to provide the types of products that AT&T seeks to offer. *See* OSS Reply Decl. ¶ 9; OSS Decl. ¶ 637; Conf. Reply Exh. LN-1 (Qwest April 3, 2003, Ex Parte in WC Docket No. 03-11) at 2-3.<sup>13/</sup>

For the most part, AT&T’s specific criticisms of IMA-EDI were already raised and rejected in either Qwest III or Qwest IV. *See* AT&T Comments, Finnegan Decl. ¶ 8. Many

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<sup>12/</sup> AT&T Comments, Finnegan Decl. ¶¶ 7, 7-17; AT&T Comments at 4, 17-18. As used herein, the term “EDI” means “IMA-EDI.”

<sup>13/</sup> For purposes of EDI documentation and interface coding, UNE-P and resale POTS orders are essentially the same.

are also being addressed through the Change Management Process ("CMP"). AT&T's specific criticisms include the following:

- *CSR Retrieval by TN.* In Qwest III, AT&T argued unsuccessfully that CLECs should be able to retrieve customer service records (CSRs) by telephone number (TN). In any event, this capability now exists in IMA release 12.0, effective April 7, 2003. OSS Reply Decl. ¶ 7.
- *TN Orientation of CSR.* AT&T's argument that CSRs should be organized by TN was rejected in Qwest III and Qwest IV. *Qwest IV Order* ¶ 58; *Qwest III Order* ¶ 54. In addition, a change request (CR) to add this capability has been prioritized fourth for inclusion in IMA release 14.0, scheduled to be implemented in December 2003. OSS Reply Decl. ¶ 7.
- *SATE.* In Qwest III, the Commission rejected AT&T's argument that Qwest's Stand-Alone Test Environment does not mirror production. *Qwest III Order* ¶¶ 137-143; OSS Reply Decl. ¶ 7.
- *900/976 Blocking and Directory Listings.* AT&T complains that 900/976 blocking options and directory listings are not included in the migration-as-specified functionality introduced in IMA 12.0 on April 7. However, these items were not part of the migration-as-specified change request. OSS Reply Decl. ¶ 7. Moreover, these items are being addressed in the CMP through submitted CRs. *Id.*

AT&T also claims that its entry into the consumer market in Minnesota has been impeded by Qwest's alleged failure to implement over 20 AT&T CRs. AT&T Comments, Finnegan Decl. ¶ 10. In processing AT&T's CRs, Qwest has followed the change management process that was designed collaboratively by CLECs (including AT&T) and Qwest, and which the Commission approved under Section 271. *Qwest III Order* ¶¶ 145-152. *See generally Declaration of Judith M. Schultz on Change Management.* AT&T does not allege otherwise.

An examination of the status of the CRs introduced by AT&T shows that Qwest has not delayed in processing AT&T's CRs or in implementing those that have been approved by the CMP. OSS Reply Decl. ¶ 11. In fact, many of the pending AT&T CRs were submitted after January 1, 2003 - including each of the CRs specifically mentioned by AT&T. *Id.* ¶ 12; *see*

AT&T Comments, Finnegan Decl. ¶ 10 & nn.8-10. As discussed in detail in the OSS Reply Declaration at ¶ 12, each of these cited AT&T CRs has been handled appropriately and in accordance with the CMP, which specifies a number of procedural steps and timeframes for consideration of each CR. A number of the AT&T CRs introduced in February 2003 have already been through the IMA 14.0 prioritization process. *Id.*

In sum, nothing in AT&T's comments calls into question the Commission's prior conclusion, in Qwest III and Qwest IV, that Qwest's EDI interfaces for pre-ordering and ordering are adequate under Section 271.

**B. Reject Rates**

AT&T contends that it has experienced an increase in reject rates in recent months, and that these recent reject rates are high. AT&T Comments at 21; Finnegan Decl. ¶¶ 40-48. In reliance on this data, AT&T contends that Qwest fails to provide nondiscriminatory access to OSS and that the defects in its OSS are the cause of the high reject rates. *Id.* The Commission previously has considered such arguments, which AT&T raised in *ex parte* filings in Qwest IV, and nevertheless concluded that Qwest's OSS and EDI documentation is adequate. *See Qwest IV Order* ¶ 55 & n.176; OSS Reply Decl. ¶ 15.

AT&T's recent higher reject rates do not constitute evidence that Qwest's OSS is defective. Other than pointing to address-related issues (some of which should be addressed by Qwest's implementation of TN migration for UNE-P in IMA release 12.0 last month), AT&T makes no attempt to explain why its reject rates have risen recently, or why they are relatively high. AT&T Comments, Finnegan Decl. ¶¶ 40-48; *see* Reply OSS Decl. ¶ 14. The Commission has held on several occasions that orders can fail for many reasons having nothing to do with a

BOC and its OSS.<sup>14/</sup> Generally, Qwest's systems were stable in January, February, and March;<sup>15/</sup> it thus appears that changes AT&T may have made in its business operations may have caused an increase in automated rejects in those months. OSS Reply Decl. ¶ 15.

AT&T also challenges Qwest's reliance, in the Qwest IV proceeding, on the low reject rates that AT&T experienced in its 2001 Minnesota UNE-P trial. AT&T Comments, Finnegan Decl. ¶ 48. AT&T argues that because its addresses were hard-coded in the orders submitted in the trial, the low reject rates are not evidence that Qwest's EDI is adequate. *Id.* ¶ 48. However, as Qwest stated in Qwest IV, "the results of the UNE-P trial are still meaningful because the low reject rates that AT&T achieved demonstrate that it is possible to have very low reject rates associated with change order activity, including feature activity."<sup>16/</sup> With the implementation of TN migration in IMA-EDI release 12.0 on April 7, 2003, AT&T's address validation related concerns will be greatly reduced. OSS Reply Decl. ¶ 17.

In its comments, WorldCom does not offer any new evidence on rejection rates, but merely points back to its Qwest IV *ex parte* filings. WorldCom Comments at 1-3. Qwest fully addressed WorldCom's arguments in its Qwest IV filings. *See, e.g.,* Conf. Reply Exh.

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<sup>14/</sup> See, e.g., *Qwest III Order* ¶ 89 (rejecting allegations that Qwest's overall reject rates indicate systemic OSS problems based on the fact that "Qwest's overall reject rates are within the range the Commission previously found acceptable" and the fact that "a number of competing CLECs experience low reject rates"); *Georgia/Louisiana 271 Order* ¶ 142 (noting that claims of high reject rates may not be entirely attributable to BellSouth); *New York 271 Order* ¶ 175 (finding that wide variation in CLEC-specific reject rates is likely attributable to CLEC, not BOC, conduct).

<sup>15/</sup> The IMA point release in January did not include any edits that would have been likely to increase a CLEC's reject rates.

<sup>16/</sup> Reply Exh. CLD-2 (Qwest April 11B, 2003, *ex parte* in WC Docket No. 03-11) at 2; *see also* Reply Exh. LN-1 (Qwest April 3, 2003, *ex parte* in WC Docket No. 03-11), Att. A at 2 and Conf. Att. A4. *See* Reply OSS Decl. ¶ 14.

LN-1 (Qwest April 3, 2003, *ex parte* in WC Docket No. 03-11). *See also* OSS Reply Decl. ¶ 19.

While WorldCom's reject rates did not decline significantly overall in March, there was a significant decline in the last week of March, after WorldCom incorporated a fix to its systems, and that reduction in WorldCom's reject rates continued through April. OSS Reply Decl. ¶ 19.

In sum, then, neither AT&T nor MCI has established that increases in reject rates they have experienced in 2003 are attributable to flaws in Qwest's OSS.

### **C. Billing**

The FCC repeatedly has held that Qwest provides CLECs with Wholesale bills and access to usage information on a non-discriminatory basis. *See* OSS Reply Decl. ¶ 25, *citing Qwest IV Order* ¶¶ 50-53; *Qwest III Order* ¶¶ 114-131. The MNPUC did not reach a collective decision with respect to Qwest's billing capabilities because two commissioners relied on findings by the Minnesota ALJ that Qwest does not provide CLECs with non-discriminatory access to Wholesale billing and usage information. *See* OSS Reply Decl. ¶ 25. But the ALJ's findings in Minnesota – and, in turn, the findings of the two commissioners that relied on his ruling – were based on evidence that was outdated and had previously been rejected by this Commission in the Qwest III proceeding. *See id.* Therefore, as explained more fully below, the MNPUC's failure to reach a consensus with respect to billing should not affect a finding of Section 271 compliance.

Only one CLEC – AT&T – raised concerns in its comments relating to billing. But, also as explained more fully below, most of AT&T's concerns either already have been resolved or are unsupported. The rest relate to matters that do not affect a finding of Section 271 compliance.



**1. The Findings of the MNPUC**

To date, the twelve regulatory commissions that have examined Qwest's billing systems in the context of a state Section 271 proceeding have held that these systems meet the requirements for interLATA entry. *See id.* The MNPUC "did not reach a collective decision" with respect to Qwest's billing capabilities because, while two Minnesota commissioners found that Qwest provides CLECs with non-discriminatory access to Wholesale billing and usage information, two other commissioners did not. *See id.*, citing MNPUC Comments at 9. But, as recently noted by the DOJ in its Evaluation, the two commissioners that did not find Qwest's billing capabilities adequate relied on ALJ findings that were based on evidence previously considered – and rejected – by the FCC in the Qwest III proceeding. *See* OSS Reply Decl. ¶ 25. Furthermore, the additional billing-related concerns raised by Commissioners Scott and Johnson (the two Minnesota commissioners who agreed with the ALJ's findings) do not affect a finding of Section 271 compliance.

**a) Issues Raised by the ALJ**

The Minnesota ALJ held that Qwest does not satisfy the statutory requirements for interLATA entry in part because Qwest is neither accurately measuring its commercial performance for Wholesale billing accuracy under PID BI-3A nor consistently meeting that performance measure. *See id.* ¶ 27. The ALJ also based his decision on a finding that Qwest is not providing CLECs with accurate daily usage files ("DUFs"). *See id.* Neither of these findings withstand scrutiny.

**(1) Billing Accuracy Under BI-3A**

The ALJ based his decision regarding BI-3A on his belief that (1) Qwest's practice of billing UNE-Star at the Resale rate and then initiating adjustments to modify those

charges renders Qwest's results under BI-3A inaccurate; (2) Qwest does not consider the manual adjustments it makes in the course of calculating its UNE-Star bills "errors" under BI-3A; and (3) Qwest has not met the parity standard under BI-3A on a regular basis in recent months. *See id.* ¶ 30.

Qwest's practice of billing UNE-Star at the Resale rate and then initiating adjustments was considered by the FCC in the Qwest III proceeding; the Commission concluded that, if these adjustments are inappropriate, they should be considered in an interconnection dispute resolution process, not in a Section 271 proceeding. *See id.* ¶ 33. The FCC reached this conclusion after examining precisely the same evidence that the ALJ considered in the Minnesota proceeding. *See id.* ¶ 34. The ALJ's findings in this area and, in turn, the two Minnesota commissioners' reliance on those findings, therefore improperly ignore FCC precedent and should be rejected.

With respect to Qwest's alleged failure to consider the adjustments it makes to UNE-Star bills as "errors" under BI-3A, these adjustments are both deliberate and necessary in order for Qwest to comply with its interconnection agreements with CLECs. *See id.* ¶ 35. As explained in the OSS Reply Declaration, Qwest is obligated by its interconnection agreements with CLECs to bill for UNE-Star at the Resale rate and then adjust those charges appropriately. *See id.* The ALJ suggested in his decision that Qwest cannot satisfy Section 271 until all CLEC UNE-Star accounts are migrated to UNE-P so that Qwest can no longer engage in this billing adjustment practice. *See id.* But Qwest has discussed this issue with the relevant CLECs and each has declined to migrate all of its UNE-Star accounts to UNE-P. The ALJ's decision and, in turn, the findings of the two Minnesota commissioners who adopted his decision, therefore

would hold Qwest to a standard that the company cannot meet without interfering with CLEC end user accounts. *See id.* ¶ 36. This renders the ALJ's findings in this area moot.

Finally, the evidence in this proceeding demonstrates that Qwest's performance results under BI-3A in Minnesota in recent months are as good as, if not better than, the level of performance the FCC previously found acceptable in the Qwest III and IV proceedings. *See id.* ¶ 37. Indeed, Qwest has billed CLECs charges that have been 98% accurate in four of the past six months and 96% accurate in the remaining two months under BI-3A. *See id.* The FCC has consistently held that instances of PID misses – “particularly where the margin of disparity is small” – generally will not prevent a finding of Section 271 compliance. *See id.*, citing *Qwest III Order* ¶¶ 37, 129, n.478. That Qwest has technically missed the parity standard while exhibiting otherwise strong performance does not warrant a departure from that finding here.

## **(2) Daily Usage Files**

The FCC has held that Qwest provides CLECs with complete, accurate and timely DUFs. *See* OSS Reply Decl. ¶ 41, citing *Qwest IV Order* ¶ 51; *Qwest III Order* ¶¶ 116-118. Apparently, the Minnesota ALJ disagreed. *See* OSS Reply Decl. ¶ 41. But the ALJ's finding and, in turn, the findings of the two Minnesota commissioners who relied on that finding, were based on evidence concerning an old manual process for providing usage information for UNE-Star that Qwest has not used for two years. *See id.* Qwest's UNE-Star DUF provisioning was mechanized in mid-2001. *See id.* The Chairman of the MNPUC expressly recognized this (and therefore disagreed with the ALJ) when he noted in his separate comments that Qwest today uses precisely the same DUF-related systems and processes for UNE-Star as it does for UNE-P. Moreover, the evidence the ALJ relied on for his finding was the same evidence that the FCC

considered – and rejected – when it held that Qwest’s DUF meets the requirements of Section 271. *See id.* ¶ 42.

The only other DUF-related finding that the ALJ made pertained to an affidavit prepared by Eschelon (and submitted by the Minnesota Department of Commerce (“DOC”)) in the Minnesota state Section 271 proceeding. *See id.* But this same affidavit also was considered and rejected by the FCC in the Qwest III proceeding. *See id.* In any case, like the DUF mechanization issue for UNE-Star discussed above, the issue raised by Eschelon’s affidavit has since been addressed by Qwest. *See id.*

**b) Additional Issues Raised by Commissioners Scott and Johnson**

In addition to supporting the findings of the ALJ, Commissioners Scott and Johnson make certain other arguments regarding Qwest’s billing capabilities. *See id.* at ¶ 43, *citing* Scott/Johnson Comments at 32-33. These arguments fall into two categories:

(1) proposed modifications to BI-3A; and (2) proposed modifications in connection with evaluating and reporting on the DUF. But, as shown below, none of these contentions prevents the FCC from finding that Qwest’s billing capabilities meet the requirements of Section 271.

**(1) Proposed Modifications to BI-3A**

Commissioners Scott and Johnson contend that in order for Qwest to demonstrate the its billing systems are performing at an adequate level, Qwest should be required to modify BI-3A to reflect (1) the percent of CLEC bills in error rather than total dollars adjusted; and (2) the adjustment in the month the CLEC was incorrectly billed rather than the month in which the adjustment was made. But, as explained in the OSS Reply Declaration, neither Commissioners Scott and Johnson nor any other party can point to evidence that these modifications are needed. *See id.* ¶¶ 44-51. Moreover, the modifications proposed by these

commissioners either are unworkable or would result in the reporting information under BI-3A that would be of less value than the information provided to CLECs today. *See id.*

All of Qwest's PIDs, including BI-3A, are the product of extensive negotiations between Qwest and CLECs. To the extent the CLECs believe BI-3A should be changed, the appropriate place to consider such a proposal would be in the Long Term PID Administration ("LTPA") meetings that began recently and are ongoing. *See id.* ¶¶ 47, 50-51. The careful balance struck in Qwest's PIDs should not be – and is not – subject to modification by state regulatory fiat.

**(2) Proposed Modifications to the DUF**

Commissioners Scott and Johnson contend that before Qwest receives Section 271 approval, its DUF should be audited using two or three months of data to ensure that it is accurate. *See Scott/Johnson Comments at 32-33.* But this is precisely what KPMG did – and in an even more thorough manner than Commissioners Scott and Johnson suggest – in the course of the ROC Third Party Test. *See OSS Reply Decl. ¶ 53.*

Commissioners Scott and Johnson also claim that before Qwest can be found in compliance with Section 271, Qwest should be required to develop and meet a new billing PID "to reflect completeness of Daily Usage Files." *See Scott/Johnson Comments at 32-33.* But the FCC has never required a BOC to report DUF completeness under commercial performance measures in order to obtain Section 271 approval. Indeed, no other BOC has such a performance measure and, to date, no CLEC has asked Qwest to add such a measure. *See OSS Reply Decl. ¶¶ 55-56.*

## **2. AT&T's Billing-Related Concerns**

Only one CLEC – AT&T – raised concerns with respect to Qwest's billing systems. But, as explained below, most of these concerns have either already been resolved or are unsupported. The rest relate to matters that are not Section 271-affecting.

### **a) Billing Completion Notices**

AT&T claims that Qwest has not established adequate processes and procedures for providing Billing Completion Notices ("BCNs") to CLECs who request them. *See* AT&T Comments at 19, Finnegan Decl. ¶¶ 22-29. Specifically, AT&T contends that (1) Qwest has not provided CLECs with adequate documentation describing the modifications that a CLEC using an EDI interface must make to its side of the gateway to receive BCNs; and (2) Qwest vitiates BCNs by generating them at the service order level rather than at the Local Service Request ("LSR") level. *See id.* Neither of these contentions is entirely accurate or has the harmful impact AT&T suggests.

#### **(1) Documentation for BCNs**

AT&T is correct that Qwest mistakenly removed descriptive status information from its documentation for EDI release 11.0. But this information has since been reinstated, and, in any event, its removal should not have prevented AT&T from being able to code its EDI interface properly. *See* OSS Reply Decl. at ¶ 59.

The removal of this information occurred in November 2002 when Qwest undertook a review of its EDI documentation and PCAT to remove any redundancy between the two documents. *See id.* ¶ 60. When performing this review, Qwest personnel (under the mistaken impression that this information already was in the PCAT) removed from Qwest's EDI documentation a description of the types of Status Updates a CLEC can receive, which includes

BCNs. When AT&T pointed this out, Qwest promptly confirmed for AT&T that this same information could be found in the documentation for EDI release 10.0. *See id.*

Importantly, the information that was removed by Qwest is not needed by CLECs to program an EDI interface to receive BCNs; it is merely a high-level description of the Status Updates CLECs can receive from Qwest, similar to the description that has appeared in each of Qwest's Section 271 filings. *See id.* ¶ 61, *citing* OSS Decl. ¶¶ 34-38. In any case, Qwest has since replaced the relevant information in its documentation for EDI release 11.0. *See* OSS Reply Decl. ¶ 61.

## **(2) Service Order vs. LSR Level BCNs**

AT&T also complains that Qwest issues BCNs at the service order level rather than at the LSR level. *See* AT&T Comments at 20, Finnegan Decl. ¶¶ 34-38. Because certain CLEC LSRs require multiple service orders, CLECs may receive multiple BCNs for each LSR. *See* OSS Decl. at ¶ 62. But, contrary to AT&T's claims, this should not confuse CLECs or lead to double-billing or under-billing. *See id.* This is because it is the Service Order Completion ("SOC"), not the BCN, that indicates to CLECs when provisioning work associated with the LSR has been completed.

AT&T also is incorrect in its claim that CLECs are at a disadvantage vis-à-vis Qwest Retail when it comes to BCNs because CLECs do not have access to real-time posting information. *See id.* ¶ 64. In fact, posting information generally is available to CLECs at the same level – the individual service order level – that it is available to Qwest Retail. *See id.* AT&T also is incorrect that delays in issuing BCNs force CLECs to delay their submission of subsequent orders. *See id.* ¶ 66. As explained by Qwest in previous Section 271 proceedings,

the process for submitting subsequent orders is virtually the same for both Wholesale and Retail.

*See id.*

AT&T contends that Qwest rejected a CR requesting that only one BCN be issued per LSR because Qwest unilaterally proclaimed the CR “economically not feasible.” *See* AT&T Comments at 20-21, Finnegan Decl. ¶ 30. This is a distortion of the facts. AT&T indeed submitted such a CR, and Qwest indeed rejected it. But it did so because the CR requested a three-day interval that would have obligated Qwest to modify its systems at a cost of more than \$5 million. *See* OSS Reply Decl. ¶ 67. After explaining this to AT&T, the parties agreed that AT&T would re-submit the CR without the three-day interval. *See id.* This revised CR was then accepted as a “late adder” for EDI version 14.0 and has been prioritized as twenty-fifth overall by the CLECs and Qwest. *See id.*

**b) Alleged BOS Deficiencies**

AT&T alleges in both its comments and in recent *ex parte* submissions that Qwest’s BOS bills contain numerous inaccuracies, including “out of balance” conditions with the CRIS paper bills, the bill detail, and the information on the CSR. *See* AT&T Ex Parte, WC Docket No. 03-90, at 1; AT&T Comments at 23, Finnegan Decl. ¶ 56. But in support for its claims AT&T offers only citations to documents that AT&T filed last year in earlier Qwest Section 271 proceedings. This alone should result in the dismissal of AT&T’s allegations.

Qwest has made significant progress with its BOS bill since first making this format available to AT&T in July 2002. *See* OSS Reply Decl. ¶ 74. Moreover, it is important that AT&T’s claims regarding the BOS bill be placed in the proper context. Qwest already has successfully demonstrated – and the FCC has confirmed – that it is capable of providing CLECs with non-discriminatory access to Wholesale billing information through its ASCII bills. *See id.*



¶ 75. As noted in our initial OSS Declaration, the overwhelming majority of CLECs receive their Wholesale bills from Qwest in ASCII format, and CLECs can – and have – successfully audited their ASCII bills and submitted billing disputes to Qwest based on those audits. *See id.*

In the *Qwest III Order*, the FCC found that Qwest’s ASCII-formatted bills are timely, accurate, and can be audited by CLECs. *See id.*, citing *Qwest III Order* ¶ 124. In reaching this decision, the FCC expressly noted that it does not require a BOC to use “particular billing systems . . . or electronic billing format, such as ASCII or BOS” to generate Wholesale bills.” *See* OSS Reply Decl. ¶ 75, citing *Qwest III Order* ¶ 122. The FCC also expressly pointed out that while it was encouraged by the fact that Qwest has begun to provide CLECs with Wholesale bills in a BOS format, it did not rely on Qwest’s BOS-formatted bills for its finding that Qwest’s Wholesale bill provisioning meets the requirements of Section 271. *See* OSS Reply Decl. ¶ 75, citing *Qwest III Order* ¶ 125. That Qwest makes available to CLECs ASCII-formatted bills therefore is sufficient for Section 271 purposes.

Although AT&T’s claims regarding Qwest’s BOS bills are not Section 271-affecting, Qwest nevertheless responds to those claims in the OSS Reply Declaration at ¶¶ 76-97. Indeed, Qwest recently undertook an in-depth analysis to assess the accuracy of its BOS bills. Qwest’s findings from this analysis are described in detail in the OSS Reply Declaration.

**c) Other Alleged Billing Inaccuracies**

AT&T makes a number of other allegations regarding Qwest’s billing systems but they either are inaccurate or have already been resolved. These allegations, which pertain to terminating access, long distance, 800 service lines, and pay-per-use charges are discussed fully in the OSS Reply Declaration at ¶¶ 68-72, 98-102.